

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer and Governmental Affairs Bureau)	CG Docket No. 02-278
Seeks Comment on Petition for Emergency)	
Declaratory Filed by IHS Markit Ltd.)	
)	

COMMENTS OF THE AUTO CARE ASSOCIATION

The Auto Care Association respectfully submits these comments in response to the Public Notice released by the Federal Communications Commission (“FCC”) Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceeding.¹ The *Public Notice* seeks comment on a petition for declaratory ruling filed by IHS (“Petitioner”) that seeks a ruling that “non-telemarketing calls related to motor vehicle safety recalls are ‘made for emergency purposes[.]’... and [are] thus exempt from the [Telephone Consumer Protection Act’s] consent requirements for autodialed or prerecorded calls to wireless telephone numbers.”

The Auto Care Association supports the Petitioner’s request for the FCC to rule that non-telemarketing calls related to motor vehicle safety recalls are made for emergency purposes and are thus exempt from the Telephone Consumer Protection Act’s consent requirements for autodialed or prerecorded calls to wireless telephone numbers.

I. ABOUT THE AUTO CARE ASSOCIATION

The Auto Care Association, a Bethesda, Md.-based trade association, has nearly 3,000 member companies and affiliates that manufacture, distribute, and sell motor vehicle parts, accessories, tools, equipment, materials, supplies and services. Auto Care Association member companies operate or otherwise represent more than 150,000 manufacturing facilities, repair

¹ *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Emergency Declaratory Ruling Filed by IHS Markit Ltd.*, Public Notice, CG Docket No. 02-278, DA 18-1023 (rel. Oct. 4, 2018)(“*Public Notice*”).

shops, part stores and distribution outlets that provide parts and services designed to keep vehicles on the road longer, perform better and drive safer.

The motor vehicle aftermarket is a significant sector of the U.S. economy.

- Employing 4.6 million people (3.2 percent of the workforce) and reporting sales of more than \$392 billion (2 percent of the nominal GDP) in 2018, a 3.6 percent increase over the previous year.
- Includes 533,000 businesses that form a coast to coast network of independent manufacturers, distributors, retailers, and repair shops.
- Provides parts, products, and service and repair for 280.6 million cars and trucks on the U.S. roads today.

II. THE AUTOMOTIVE AFTERMARKET INDUSTRY SUPPORTS A ROBUST AND EFFICIENT MOTOR SAFETY RECALL SYSTEM

Throughout the United States, and on a daily basis, people obtain repairs and upgrades for their vehicles at automotive repair shops that are not affiliated with the manufacturer. In fact, most surveys have shown that 75 to 80 percent of repairs are performed by independent repair facilities after the new car warranty has expired. While most independent shops make a policy of informing car owners of a pending recall for their vehicle, often, information on recall campaigns is not widely available outside of franchised new car dealers.

In fact, most recall alerts come directly from the vehicle manufacturer (or their contractor) directly to the owner of the vehicle. However, in many cases a letter to the owner of a vehicle informing them of a recall is ignored. JD Power reported in 2016 that only one in six vehicles with recalls are actually fixed. A perfect example of the challenges in pushing consumers to obtain recall repairs is the Takata airbag recall. Even though the Takata airbag recall was national news and was the largest automotive safety recall ever initiated, 41.62% of the total affected airbags had not still not been repaired three years after the National Highway Traffic Safety Administration (“NHTSA”) Coordinated Remedy Order.² In order to ensure the safe operation of the more than 280 million cars and trucks on the road, it is imperative that we

²² Id.

have a robust and efficient motor safety recall system with all unnecessary barriers in this process removed.

III. MOTOR SAFETY RECALLS NECESSARILY INCLUDE AUTOMATED CALLS AND TEXTS TO CONSUMERS

The Auto Care Association supports IHS Markit's position that automated calls and texts to consumers are a necessary component of a robust emergency motor safety recall process. In its Petition for Emergency Declaratory Ruling, IHS Market stated, "an insufficient number of consumers are reachable by landline numbers alone. Automated calling technologies ensure more reliable and consistent communications to affected vehicle owners' mobile phones while reducing human dialing errors."³ Time is of the essence in a motor safety recall. Given the difficulty of identifying affected consumers, it is imperative that the most efficient mechanisms for contacting consumers remain unrestricted to decrease the length of time between consumer identification and vehicle repair.

IV. IT IS NECESSARY TO CONFIRM THOSE CALLS ARE MADE FOR EMERGENCY PURPOSES

To ensure that motor safety recalls can continue unthwarted, the Auto Care Association believes it is necessary for the FCC to issue guidance clarifying that automated calls made as a part of a motor safety recall qualify for the Telephone Consumer Protection Act's ("TCPA") public safety exception.

The TCPA public safety exception states that automated calls may be placed without a consumer's prior express consent if those calls are "made for emergency purposes."⁴ The FCC defines in regulation the term "emergency purposes" to mean calls made necessary in any situation affecting the health and safety of consumers.⁵ Federal law defines motor vehicle safety as "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an

³ *Petition for Emergency Declaratory Ruling Filed by IHS Markit Ltd.*, Public Notice, CG Docket No. 02-278, DA 18-1023 (Sep. 21, 2018) ("*Petition*").

⁴ 47 U.S.C. § 227(b)(1)(A)(iii)

⁵ 47 C.F.R. § 64.1200(f)(4)

accident, and includes nonoperational safety of a motor vehicle.” Despite the logical link between motor safety recalls and the health and safety of consumers, litigation is bubbling up that seeks to capitalize on the fact that automated calls made in the course of motor safety recalls are not explicitly exempt from TCPA. To ensure that motor safety recalls can continue unthwarted, the Auto Care Association believes it is necessary for the FCC to issue guidance clarifying that automated calls made as a part of a motor safety recall qualify for the TCPA public safety exception.

V. AN FCC RULING THAT THOSE CALLS ARE EXEMPT FROM TCPA IS CONSISTENT WITH NHTSA PUBLIC STATEMENTS AND FEDERAL COURT HOLDINGS

A declaratory ruling by the FCC holding that automated calls made during the course of a motor safety recall are for “emergency purposes” would be consistent with NHTSA public statements and Federal court rulings. NHTSA has stated that “[r]ecall notifications are safety-related informational messages.”⁶ In the course of the Takata airbag multidistrict litigation, the court held that the recall effort affects the health and safety of consumers and that automated calls made in the course of this motor safety recall should be exempt from the TCPA:

The Court finds that it is in the public interest and that of the federal government to begin this Outreach program as soon as practicable, if not already begun, and that calls and texts made under the Outreach program are being made for emergency purposes as that phrase is used in 47 U.S.C. § 227(b)(1)(A). Direct consumer contact through the Outreach Program is undertaken to convey important public safety information to consumers.⁷

For the reasons stated above, the Auto Care Association respectfully requests that the FCC grant Petitioner’s request and issue an emergency declaratory ruling holding that automated calls made as a part of motor safety recalls are exempt from the TCPA.

Respectfully submitted,

By: /s/ Aaron Lowe

⁶ 81 Fed. Reg. 60,335 (Sept. 1, 2016)

⁷ In re: Takata Airbag Prods. Liability Litig., MDL No. 2599, Dkt. 2388 at 5 (S.D. Fla. Feb. 28, 2018)

Senior Vice President, Regulatory Affairs
Auto Care Association
7101 Wisconsin Avenue, Suite 1300
Bethesda, MD 20814
(P): (202) 333-1021

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